



## **LIBRARY OF CONGRESS**

### **Copyright Royalty Board**

**[Docket Nos. 2007-3 CRB CD 2004-2005, 2008-4 CRB CD 2006, 2009-6 CRB CD 2007, 2010-6 CRB CD 2008, 2011-7 CRB 2009; 2010-2 CRB SD 2004-2007, 2010-7 CRB 2008, 2011-8 CRB SD 2009]**

### **Distribution of the 2004-2009 Cable and Satellite Royalty Funds**

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice requesting comments on Phase I and II controversies and soliciting objections on motions for further distribution.

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**SUMMARY:** The Copyright Royalty Judges are soliciting objections on motions of the

Phase I claimants for further distributions in connection with the 2004-2009 cable and satellite royalty funds as well as requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of these royalty funds.

**DATES:** Comments and objections are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** Comments and objections may be sent electronically to [crb@loc.gov](mailto:crb@loc.gov). In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977. If hand delivered by a private party, comments and objections must be brought to the Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by a commercial courier, comments and objections must be delivered to the

Congressional Courier Acceptance Site located at 2<sup>nd</sup> and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE., Washington, DC 20559-6000.

**FOR FURTHER INFORMATION CONTACT:** LaKeshia Keys, Program Specialist, by telephone at (202) 707-7658 or by e-mail at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Each year cable systems and satellite carriers must submit royalty payments to the Copyright Office as required by the statutory licenses set forth in sections 111 and 119, respectively, of the Copyright Act, title 17 of the United States Code, for the retransmission to cable and satellite subscribers of over-the-air television broadcast stations (cable subscribers also receive radio broadcast signals). These royalties are then distributed to copyright owners whose works were included in such a qualifying transmission and who timely filed a claim for royalties. Distribution of the royalties for each calendar year is conducted by the Copyright Royalty Judges in two phases. At Phase I, the royalties are divided among the representatives of the major categories of copyrightable content (movies, sports programming, music, etc.) requesting the distribution. At Phase II, the royalties are divided among the various copyright owners within each category.

Distribution of royalties in any given royalty year may be made through a negotiated settlement among the parties. 17 U.S.C. 111(d)(4)(A), 119(b)(4)(A). If, however, the claimants do not reach an agreement with respect to the proper distribution

of the royalties, either at Phase I or Phase II, the Copyright Royalty Judges are required to conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B), 119(b)(4)(B).

### **Notices of Phase I Settlement and Motions for Further Distribution**

On November 4, 2011, representatives of the Phase I claimant categories (the “Phase I Parties”)<sup>1</sup> filed with the Judges separate “Phase I Parties’ Notice of Phase I Settlement and Motion for Further Distribution”<sup>2</sup> with respect to the 2004-2009 cable and satellite royalty funds. Specifically, the Phase I Parties stated that they had reached a global “settlement of all outstanding Phase I controversies regarding distribution of the 2004-2009” cable and satellite royalty funds. Motions at 2. Consequently, they requested that the Judges: (1) reserve specified amounts (\$20 million of the cable royalties and \$13 million of the satellite royalties)—to be divided equally among each of the six years--to satisfy previously identified Phase II controversies and (2) authorize the lump-sum distribution of all remaining 2004-2009 cable and satellite royalties to the Phase I Parties through a common agent. *Id.* The reserve amounts<sup>3</sup> would be allocated

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<sup>1</sup> The “Phase I Parties” with regard to the motion for cable royalties are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants, Canadian Claimants Group, Music Claimants (American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; and SESAC, Inc.), Devotional Claimants, and National Public Radio.

Public Television Claimants, Canadian Claimants Group, and National Public Radio are not signatories to the motion for distribution of satellite royalties as they are not eligible to receive these royalties.

<sup>2</sup> The further distributions are requested pursuant to section 801(b)(3)(A) of the Copyright Act, which allows the Judges to authorize the distribution of cable and satellite royalties “to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.” 17 U.S.C. 801(b)(3)(A). Prior partial distributions of 50% of the cable and satellite royalties have been made for each of the years 2004-2009 pursuant to section 801(b)(3)(C). *See Distribution Orders* cited *infra*.

<sup>3</sup> As of October 27, 2011, the remaining 50% for the 2004-2009 cable royalties amounted to approximately \$462 million and the remaining 50% for the 2004-2009 satellite royalties amounted to approximately \$270 million.

among three categories in which Phase II controversies have been identified previously. With regard to the cable royalties, the reserve amounts would be: \$3 million for the Program Suppliers category; \$1 million for the Joint Sports category; and \$16 million for the Devotional category. Cable Motion at 4. Similarly, the reserve amounts for the satellite royalties would be: \$3 million for the Program Suppliers category; \$1 million for the Joint Sports category; and \$9 million for the Devotional category. Satellite Motion at 4.

The Independent Producers Group (“IPG”) opposes both of the Phase I Parties’ motions. IPG, which has asserted Phase II claims in each of the categories for which reserve amounts are proposed, bases its opposition, in part, on its concerns that the proposed reserve amounts are inadequate to resolve outstanding Phase II claims. *See* IPG Opposition at 4-5.

On December 14, 2011, the Judges held a hearing on the Phase I Parties’ motions, where the Phase I Parties and IPG reiterated their respective positions. In light of IPG’s continued opposition to the Phase I Parties’ motions and to determine whether any other controversies with respect to the 2004 through 2009 cable and satellite royalty funds may be outstanding, the Judges are directing publication of this notice. In particular, the Judges solicit comments to determine whether there are any controversies, either at Phase I or Phase II, with respect to each of the royalty funds that are the subject of the motions (*i.e.*, cable or satellite 2004 through 2009).

#### **Request Regarding Reasonable Objections to the Proposed Settlements**

The Judges also seek to determine whether any interested claimant has a reasonable objection that would preclude the requested distributions of the 2004-2009

cable and satellite royalty funds to the Phase I Parties. Such objections should address whether the reserve amounts proposed by the Phase I Parties are adequate by year. If not, then what would be an adequate reserve amount to settle all outstanding claims for each of the years covered by the proposed settlement? The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the requested distributions that come to their attention after the close of that period.

Finally, the Judges have authorized prior partial distributions of 50% of each of the 2004-2009 cable and satellite royalties pursuant to their authority under section 801(b)(3)(C). *See, Distribution Orders*, Docket No. 2007-3 CRB CD 2004-2005 (April 10, 2008, and April 16, 2008); *Distribution Order*, Docket No. 2008-4 CRB CD 2006 (December 2, 2008); *Distribution Order*, Docket No. 2009-6 CRB CD 2007 (October 22, 2009); *Distribution Order*, Docket No. 2010-6 CRB CD 2008 (January 11, 2011); *Distribution Order*, Docket No. 2011-7 CRB CD 2009 (October 13, 2011); *Distribution Order*, Docket No. 2010-2 CRB SD 2004-2007 (March 23, 2010); *Distribution Order*, Docket No. 2010-7 CRB SD 2008 (January 11, 2011); and *Distribution Order*, Docket No. 2011-8 CRB SD 2009 (October 13, 2011). As a condition of receiving a partial distribution under that provision of the Copyright Act, the parties must “sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under [section 801(b)(3)(B)].” 17 U.S.C. 801(b)(3)(C)(ii). The Judges seek comment on what conditions, if any, should be imposed on the Phase I Parties to ensure that they are obligated to repay any amounts with interest that they received in the proposed settlement

if such amount is later determined to be in excess of what a particular Phase I Party is due. For example, should each Phase I Party be required to represent that it will repay any overpayment or is such obligation already covered by the representations that each Phase I Party signed as a condition to receiving its respective shares of the earlier partial distributions for 2004 through 2009?

Each Phase I Parties' Notice of Phase I Settlement and Motion for Further Distribution is posted on the Copyright Royalty Board ("CRB") Web site at <http://www.loc.gov/crb>. Comments received in response to this Notice also may be posted on the Web site.

Dated: December 20, 2011

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William J. Roberts, Jr.,  
U.S. Copyright Royalty Judge.

**[BILLING CODE: 1410-72-P]**

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